

Appl. No. 09/899,552
Response dated April 22, 2005
Reply to Office action of March 22, 2005

REMARKS/ARGUMENTS

Claim Amendments

By the present amendment, claims 25-38 have been withdrawn as being directed to non-elected subject matter.

The claim amendments have been made without prejudice and without acquiescing to any of the Examiner's objections. The Applicants submit that no new matter has been entered by the present amendment and entry of the amendments is respectfully requested.

The Official Action dated March 22, 2005 has been carefully considered. It is believed that the claims submitted herewith and the following comments represent a complete response to the Examiner's comments and place the present application in condition for allowance. Reconsideration is respectfully requested.

Applicants provisionally elect the subject matter of Group I, namely claims 1-24, for initial examination in this application. The election is made with traverse.

The Examiner has clearly erred in asserting a Restriction Requirement in the present invention. Indeed, 35 USC § 121 allows the Examiner to restrict claims to separate inventions, however, the MPEP 808.02 instructs the Examiner to assert a restriction under the following circumstances:

- 1) each distinct invention has a separate classification in the Patent Office patent classification system;
- 2) each distinct invention has a separate status in the art; or
- 3) a different field of search is necessary for each distinct invention.

If the Examiner's reason for asserting the Restriction Requirement relies on the "separate classification system" policy, the Requirement must clearly provide an

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appropriate explanation as to why "each distinct subject has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search." Does the Examiner satisfy this requirement? Clearly the Examiner does not as the claims of groups I and II both fall within class 435, subclass 7.1.

If the Examiner relies on each group as having acquired "a separate status in the art" then the MPEP instructs "[s]eparate status may be shown by citing patents which are evidence of such separate status." The Examiner has failed to cite any reference supporting a Restriction Requirement under (2) above.

If, however, the Examiner maintains that a different field of search is necessary for each group, then the Applicant respectfully disagrees with this allegation. The claims of group I are directed to methods of ranking an immune response in an animal by measuring an antibody response. The claims of group II are directed to methods of ranking an immune response in an animal by measuring the same antibody response, along with an additional measure of a cell mediated immune response. It is readily apparent that a search of the claims of group I would also uncover any art directed to the claims of group II since the claims of group II merely add the additional feature of cell mediated immune response measurements to the method of the claims of group I. Clearly the Examiner has erred in asserting a Restriction Requirement in the present case for reason (3) above.

The Examiner's attention is drawn to the MPEP 808.02, concluding paragraph:

Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons, exist for dividing among related invention.

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Accordingly, the Applicants do not accept the asserted Restriction Requirement *pro forma*, but instead traverse the Examiner's action, and request that the claims of group II be examined together with the claims of group I.

In response to the requirement for an election of a single disclosed species, the Applicants hereby elect the following species:

The antigen used to induce the immune response: ovalbumin

The type of stress the animal is undergoing: periparturition

The animal from which the immune response is being measured: bovine.

Early and favorable action on the merits is awaited. Should the Examiner deem it beneficial to discuss the application in greater detail, the Examiner is kindly requested to contact the undersigned by telephone at (416) 957-1683 at the Examiner's convenience.

The Applicant believes that no fee is required with this response, however, if any fee is due, please charge any fee deficiency or credit any overpayment to the Deposit Account No. 02-2096.

Respectfully submitted,

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